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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Tyerel Darnel Luke,
10 Plaintiff,

No. CV 20-00058-PHX-JAT (JZB)

11 v.

ORDER

12 State of Arizona, et al.,
13 Defendants.
14

15 On January 9, 2020, Plaintiff Tyerel Darnel Luke, who is confined in the Arizona
16 State Prison Complex-Eyman, filed a pro se civil rights Complaint pursuant to 42 U.S.C.
17 § 1983 and an Application to Proceed In Forma Pauperis. In a February 26, 2020 Order,
18 the Court granted the Application to Proceed and dismissed the Complaint because Plaintiff
19 had failed to state a claim. The Court gave Plaintiff 30 days to file an amended complaint
20 that cured the deficiencies identified in the Order.

21 On March 19, 2020, Plaintiff filed his First Amended Complaint (Doc. 7). On May
22 7, 2020, Plaintiff filed a “Motion to Settle Case” (Doc. 8). On May 14, 2020, Plaintiff filed
23 a Motion for Emergency Injunction and Restraining Order (Doc. 9). The Court will deny
24 the Motions and dismiss the First Amended Complaint with leave to amend.

25 **I. Statutory Screening of Prisoner Complaints**

26 The Court is required to screen complaints brought by prisoners seeking relief
27 against a governmental entity or an officer or an employee of a governmental entity. 28
28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if a plaintiff

1 has raised claims that are legally frivolous or malicious, that fail to state a claim upon which
 2 relief may be granted, or that seek monetary relief from a defendant who is immune from
 3 such relief. 28 U.S.C. § 1915A(b)(1)–(2).

4 A pleading must contain a “short and plain statement of the claim *showing* that the
 5 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
 6 not demand detailed factual allegations, “it demands more than an unadorned, the-
 7 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 8 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
 9 conclusory statements, do not suffice.” *Id.*

10 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
 11 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
 12 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
 13 that allows the court to draw the reasonable inference that the defendant is liable for the
 14 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
 15 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
 16 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual
 17 allegations may be consistent with a constitutional claim, a court must assess whether there
 18 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

19 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
 20 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342
 21 (9th Cir. 2010). A “complaint [filed by a pro se prisoner] ‘must be held to less stringent
 22 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551
 23 U.S. 89, 94 (2007) (per curiam)).

24 If the Court determines that a pleading could be cured by the allegation of other
 25 facts, a pro se litigant is entitled to an opportunity to amend a complaint before dismissal
 26 of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th Cir. 2000) (en banc).
 27 Plaintiff’s First Amended Complaint will be dismissed for failure to state a claim, but
 28

1 because it may possibly be amended to state a claim, the Court will dismiss it with leave
2 to amend.

3 **II. First Amended Complaint**

4 In his two-count First Amended Complaint, Plaintiff sues Arizona Department of
5 Corrections (ADC) Director David Shinn, Facility Health Administrator C. Demery, and
6 Paralegal Ulaberry. Plaintiff asserts claims of denial of access to the courts and inadequate
7 medical care. He seeks to be placed in the Arizona State Hospital as a civilly-committed
8 person and for punitive damages in the amount of \$1 million, but if he is not moved to the
9 Arizona State Hospital, he seeks additional damages of \$10,000 per day. Plaintiff also
10 requests appointment of counsel.

11 In Count One, Plaintiff alleges that he is unable to “get guidance” from the unit’s
12 paralegal, case law, and legal research books, in violation of the Americans with
13 Disabilities Act. He asserts he is not afforded learning or legal material to assist him in
14 fighting his unconstitutional conviction. Plaintiff claims he is seriously mentally ill and
15 “get[s] lost” in trying to defend himself, and the confusion in his thinking prevents him
16 from correctly defending himself. Plaintiff alleges that the state paralegal lies, provides
17 misleading information, and claims that she cannot help him. Plaintiff asserts that his
18 problems focusing, learning disability, and schizoaffective disorder “will be the
19 impairments” that keep him in prison, and access to the courts is “mostly close[d]” to him
20 because he is only allowed access to a prison paralegal. As his injury, Plaintiff claims he
21 has experienced self-doubt, voices, “cell tipping,” anxiety, confusion, and further
22 imprisonment in his mind.

23 In Count Two, Plaintiff alleges that he has been diagnosed as mentally and seriously
24 mentally ill since 1991. He asserts that the mental health staff allowed a non-sex offender
25 prisoner into Plaintiff’s cell to fight him, and non-sex offenders “get[] the good jobs,”
26 Walkmans, and televisions. Plaintiff claims he complained and “had to fight” with a non-
27 sex offender and was “sp[r]ayed.” Plaintiff alleges that the mental health officer said that
28 during the fight, Plaintiff hit an officer, which never happened. Plaintiff asserts he received

1 major tickets, while the other prisoner received only a minor ticket. Plaintiff claims the
 2 mental health units are very dangerous and he was “very close to killing” to protect himself
 3 against prisoners and officers. Plaintiff alleges that when he defends himself, he gets into
 4 trouble, so he “signed out” of the SMI units “before they cause[d] him to kill.” Plaintiff
 5 asserts that the provider is giving him medication to increase his high blood pressure. He
 6 claims that ADC medical staff cannot care for him like the Arizona State Hospital can.
 7 Plaintiff alleges he was “last there” in 2013 and had the right medication, healthcare, and
 8 mental health treatment. He asserts that he can get the best care without worrying whom
 9 mental health staff and officers are going to allow in his cell to “make war with [him].”
 10 Plaintiff claims that at the Arizona State Hospital, he has full access to caselaw, guidance,
 11 and direct phone calls to any attorney. He alleges he needs pro bono assistance.

12 **III. Failure to State a Claim**

13 Although pro se pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,
 14 520-21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*
 15 *v. Bd. of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a liberal interpretation of a
 16 civil rights complaint may not supply essential elements of the claim that were not initially
 17 pled. *Id.*

18 **A. Defendant Shinn**

19 To state a valid claim under § 1983, plaintiffs must allege that they suffered a
 20 specific injury as a result of specific conduct of a defendant and show an affirmative link
 21 between the injury and the conduct of that defendant. *See Rizzo v. Goode*, 423 U.S. 362,
 22 371-72, 377 (1976). There is no respondeat superior liability under § 1983, and therefore,
 23 a defendant’s position as the supervisor of persons who allegedly violated Plaintiff’s
 24 constitutional rights does not impose liability. *Monell v. Dep’t of Soc. Servs.*, 436 U.S. 658
 25 (1978); *Hamilton v. Endell*, 981 F.2d 1062, 1067 (9th Cir. 1992); *Taylor v. List*, 880 F.2d
 26 1040, 1045 (9th Cir. 1989). “Because vicarious liability is inapplicable to *Bivens* and
 27 § 1983 suits, a plaintiff must plead that each Government-official defendant, through the
 28 official’s own individual actions, has violated the Constitution.” *Iqbal*, 556 U.S. at 676.

1 Plaintiff has not alleged that Defendant Shinn personally participated in a
 2 deprivation of Plaintiff's constitutional rights, was aware of a deprivation and failed to act,
 3 or formed policies that resulted in Plaintiff's injuries. Plaintiff makes no allegations at all
 4 against Shinn. Thus, the Court will dismiss without prejudice Defendant Shinn.

5 **B. Defendant Demery**

6 Plaintiff does not connect any of the allegations in the First Amended Complaint to
 7 Defendant Demery, and this Defendant will therefore be dismissed.

8 **C. Defendant Ulaberry**

9 The right of meaningful access to the courts prohibits officials from actively
 10 interfering with inmates' attempts to prepare or file legal documents. *Lewis v. Casey*, 518
 11 U.S. 343, 350 (1996). The right of access to the courts is only a right to bring petitions or
 12 complaints to federal court and not a right to discover such claims or even to litigate them
 13 effectively once filed with a court. *Id.* at 354. The right "guarantees no particular
 14 methodology but rather the conferral of a capability—the capability of bringing
 15 contemplated challenges to sentences or conditions of confinement before the courts." *Id.*
 16 at 356.

17 As a matter of standing, for an access-to-courts claim, a plaintiff must show that he
 18 suffered an "actual injury" with respect to contemplated litigation. *Id.* at 349. To show
 19 actual injury with respect to contemplated litigation, the plaintiff must demonstrate that the
 20 defendants' conduct frustrated or impeded him from bringing to court a nonfrivolous claim
 21 that he wished to present. *Id.* at 352-53.

22 "[T]he injury requirement is not satisfied by just any type of frustrated legal claim."
 23 *Id.* at 354. The right of access to the courts "does not guarantee inmates the wherewithal
 24 to transform themselves into litigating engines capable of filing everything from
 25 shareholder derivative actions to slip-and-fall claims." *Id.* at 355. The nonfrivolous claim
 26 must be a direct or collateral attack on the inmate's sentence or a challenge to the conditions
 27 of his confinement. *Id.* "Impairment of any *other* litigating capacity is simply one of the
 28 incidental (and perfectly constitutional) consequences of conviction and incarceration." *Id.*

1 (emphasis in original).

2 Plaintiff's allegations are too vague and conclusory to state a claim against
3 Defendant Ulaberry. Plaintiff does not allege that Ulaberry *actively interfered* with his
4 criminal case or any other case. Plaintiff also does not identify a nonfrivolous claim related
5 to his conviction and sentence or conditions of confinement that he was unable to present
6 as a result of Ulaberry's conduct. The Court will therefore dismiss Defendant Ulaberry.

7 **IV. Leave to Amend**

8 For the foregoing reasons, Plaintiff's First Amended Complaint will be dismissed
9 for failure to state a claim upon which relief may be granted. Within 30 days, Plaintiff may
10 submit a second amended complaint to cure the deficiencies outlined above. The Clerk of
11 Court will mail Plaintiff a court-approved form to use for filing a second amended
12 complaint. If Plaintiff fails to use the court-approved form, the Court may strike the second
13 amended complaint and dismiss this action without further notice to Plaintiff.

14 Plaintiff must clearly designate on the face of the document that it is the "Second
15 Amended Complaint." The second amended complaint must be retyped or rewritten in its
16 entirety on the court-approved form and may not incorporate any part of the original
17 Complaint or First Amended Complaint by reference. Plaintiff may include only one claim
18 per count.

19 A second amended complaint supersedes the original Complaint and First Amended
20 Complaint. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v.*
21 *Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court
22 will treat the original Complaint and First Amended Complaint as nonexistent. *Ferdik*,
23 963 F.2d at 1262. Any cause of action that was raised in the original Complaint or First
24 Amended Complaint and that was voluntarily dismissed or was dismissed without
25 prejudice is waived if it is not alleged in a second amended complaint. *Lacey v. Maricopa*
26 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

27 If Plaintiff files a second amended complaint, Plaintiff must write short, plain
28 statements telling the Court: (1) the constitutional right Plaintiff believes was violated;

(2) the name of the Defendant who violated the right; (3) exactly what that Defendant did or failed to do; (4) how the action or inaction of that Defendant is connected to the violation of Plaintiff's constitutional right; and (5) what specific injury Plaintiff suffered because of that Defendant's conduct. *See Rizzo*, 423 U.S. at 371-72, 377.

Plaintiff must repeat this process for each person he names as a Defendant. If Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for failure to state a claim. **Conclusory allegations that a Defendant or group of Defendants has violated a constitutional right are not acceptable and will be dismissed.**

If Plaintiff files a second amended complaint, he should be aware that not every claim by a prisoner relating to inadequate medical treatment states a violation of the Eighth Amendment. To state a § 1983 medical claim, a plaintiff must show (1) a "serious medical need" by demonstrating that failure to treat the condition could result in further significant injury or the unnecessary and wanton infliction of pain and (2) the defendant's response was deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006).

"Deliberate indifference is a high legal standard." *Toguchi v. Chung*, 391 F.3d 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both know of and disregard an excessive risk to inmate health; "the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Deliberate indifference in the medical context may be shown by a purposeful act or failure to respond to a prisoner's pain or possible medical need and harm caused by the indifference. *Jett*, 439 F.3d at 1096. Deliberate indifference may also be shown when a prison official intentionally denies, delays, or interferes with medical treatment or by the way prison doctors respond to the prisoner's medical needs. *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976); *Jett*, 439 F.3d at 1096.

Deliberate indifference is a higher standard than negligence or lack of ordinary due care for the prisoner's safety. *Farmer*, 511 U.S. at 835. "Neither negligence nor gross negligence will constitute deliberate indifference." *Clement v. Cal. Dep't of Corr.*, 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002); *see also Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of "indifference," "negligence," or "medical malpractice" do not support a claim under § 1983). "A difference of opinion does not amount to deliberate indifference to [a plaintiff's] serious medical needs." *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in medical care, without more, is insufficient to state a claim against prison officials for deliberate indifference. *See Shapley v. Nev. Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985). The indifference must be substantial. The action must rise to a level of "unnecessary and wanton infliction of pain." *Estelle*, 429 U.S. at 105.

V. Request for Appointment of Counsel

In the First Amended Complaint, Plaintiff requests appointment of counsel. There is no constitutional right to the appointment of counsel in a civil case. *See Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). In proceedings in forma pauperis, the court may request an attorney to represent any person unable to afford one. 28 U.S.C. § 1915(e)(1). Appointment of counsel under 28 U.S.C. § 1915(e)(1) is required only when "exceptional circumstances" are present. *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). A determination with respect to exceptional circumstances requires an evaluation of the likelihood of success on the merits as well as the ability of Plaintiff to articulate his claims pro se in light of the complexity of the legal issue involved. *Id.* "Neither of these factors is dispositive and both must be viewed together before reaching a decision." *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).

Having considered both elements, it does not appear at this time that exceptional circumstances are present that would require the appointment of counsel in this case. Plaintiff is in no different position than many pro se prisoner litigants. Thus, the Court will deny without prejudice Plaintiff's request for appointment of counsel.

VI. Pending Motions

A. Motion to Settle Case

In his “Motion to Settle Case,” Plaintiff appears to offer to dismiss this case if Defendants will release him to the Arizona State Hospital. Plaintiff requests compassionate release so that he can receive “prompt” care at the Arizona State Hospital for his serious mental health issues, for which Plaintiff claims he cannot safely receive treatment in ADC’s mental health units. Plaintiff claims that because he has high blood pressure and high cholesterol, COVID-19 “can easily kill [him].” Plaintiff asserts that he is African-American and is “highly [e]ndangered” by the virus. He alleges prisoners in SMU-I have been diagnosed with COVID-19, and a psych associate who saw Plaintiff had also seen prisoners who had been diagnosed with the virus. Plaintiff also alleges that he is seriously mentally ill and because of stressors, he is unable to conduct legal proceedings in his criminal case. He asks that Defendant Shinn grant him compassionate release for one year or more.

To the extent that Plaintiff seeks release from ADC custody, he may not do so in a § 1983 case or separate motion. The sole federal remedy for a person challenging the fact or duration of his confinement is a petition for writ of habeas corpus. *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973).¹

¹ Before the court may grant habeas relief to a state prisoner, the prisoner must exhaust available state court remedies. 28 U.S.C. § 2254(b)(1); *O’Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999). Plaintiff should note that Arizona Revised Statutes section 31-233(B) provides:

Under specific rules established by the director for the selection of inmates, the director may [] authorize furlough, temporary removal or temporary release of any inmate for compassionate leave, for the purpose of furnishing to the inmate medical treatment not available at the prison or institution, for purposes preparatory to a return to the community within ninety days of the inmate’s release date or for disaster aid, including local mutual aid and state emergencies. When an inmate is temporarily removed or temporarily released for a purpose preparatory to return to the community or for compassionate leave, the director may require the inmate to reimburse the state, in whole or part, for expenses incurred by the state in connection with the inmate’s temporary removal or release.

1 **B. Motion for Emergency Injunction and Restraining Order**

2 In his Motion for Emergency Injunction, Plaintiff asks the Court to order Defendants
3 to stop housing him with non-sex offenders in the mental health units. Plaintiff asserts that
4 because he is a sex offender, he has been “hurt” by non-sex offender prisoners in the mental
5 health units, and prison staff “turn their heads and lie on [Plaintiff].” Plaintiff also contends
6 that housing him in SMU I is “true” psychological abuse because he is housed in a
7 maximum custody unit, but he is a close custody prisoner and has had no disciplinary
8 infractions for nearly two years. Plaintiff asserts that Defendant Shinn should allow him
9 to be assessed by the Arizona State Hospital and “allow [him] a compassionate leave” to
10 the hospital and states that Shinn “has until May 19, 2020 to do so.”

11 “The standard for issuing a temporary restraining order is identical to the standard
12 for issuing a preliminary injunction.” *Whitman v. Hawaiian Tug & Barge*
13 *Corporation/Young Bros., Ltd. Salaried Pension Plan*, 27 F. Supp. 2d 1225, 1228 (D. Haw.
14 1998). To obtain a preliminary injunction, the moving party must show “that he is likely
15 to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
16 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
17 the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 21
18 (2008). The moving party has the burden of proof on each element of the test.
19 *Environmental Council of Sacramento v. Slater*, 184 F. Supp. 2d 1016, 1027 (E.D. Cal.
20 2000).

21 Because the First Amended Complaint will be dismissed, Plaintiff has failed to
22 demonstrate he is likely to succeed on the merits of his claims. The Court will therefore
23 deny the Motion for Emergency Injunction and Restraining Order.

24 **VII. Warnings**

25 **A. Release**

26 If Plaintiff is released while this case remains pending, and the filing fee has not
27 been paid in full, Plaintiff must, within 30 days of his release, either (1) notify the Court
28 that he intends to pay the unpaid balance of his filing fee within 120 days of his release or

(2) file a non-prisoner application to proceed in forma pauperis. Failure to comply may result in dismissal of this action.

B. Address Changes

Plaintiff must file and serve a notice of a change of address in accordance with Rule 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other relief with a notice of change of address. Failure to comply may result in dismissal of this action.

C. Possible “Strike”

Because the First Amended Complaint has been dismissed for failure to state a claim, if Plaintiff fails to file a second amended complaint correcting the deficiencies identified in this Order, the dismissal may count as a “strike” under the “3-strikes” provision of 28 U.S.C. § 1915(g). Under the 3-strikes provision, a prisoner may not bring a civil action or appeal a civil judgment in forma pauperis under 28 U.S.C. § 1915 “if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g).

D. Possible Dismissal

If Plaintiff fails to timely comply with every provision of this Order, including these warnings, the Court may dismiss this action without further notice. *See Ferdik*, 963 F.2d at 1260-61 (a district court may dismiss an action for failure to comply with any order of the Court).

IT IS ORDERED:

(1) Plaintiff’s request for appointment of counsel (Doc. 7 at 1) is **denied**.

(2) Plaintiff’s “Motion to Settle Case” (Doc. 8) and Motion for Emergency Injunction and Restraining Order (Doc. 9) are **denied**.

(4) If Plaintiff fails to file a second amended complaint within 30 days, the Clerk of Court must, without further notice, enter a judgment of dismissal of this action with prejudice that states that the dismissal may count as a “strike” under 28 U.S.C. § 1915(g) and deny any pending unrelated motions as moot.

Dated this 19th day of May, 2020.

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**Instructions for a Prisoner Filing a Civil Rights Complaint
in the United States District Court for the District of Arizona**

1. Who May Use This Form. The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
2. The Form. **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
3. Your Signature. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. The Filing and Administrative Fees. The total fees for this action are \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee). If you are unable to immediately pay the fees, you may request leave to proceed in forma pauperis. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court In Forma Pauperis Pursuant to 28 U.S.C. § 1915” for additional instructions.
5. Original and Judge's Copy. You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**
6. Where to File. You should file your complaint in the division **where you were confined when your rights were allegedly violated.** See LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$400 filing and administrative fees or the application to proceed in forma pauperis to:**

Phoenix & Prescott Divisions:
U.S. District Court Clerk
U.S. Courthouse, Suite 130
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

OR

Tucson Division:
U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

7. Change of Address. You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. Certificate of Service. You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed in forma pauperis). Each original document (except the initial complaint and application to proceed in forma pauperis) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. *See Fed. R. Civ. P. 5(a), (d).* Any document received by the Court that does not include a certificate of service may be stricken. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**

A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this _____ (month, day, year) to:

Name: _____

Address: _____

Attorney for Defendant(s)

(Signature)

9. Amended Complaint. If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court within 21 days after serving it or within 21 days after any defendant has filed an answer, whichever is earlier. *See Fed. R. Civ. P. 15(a).* Thereafter, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. Exhibits. You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. Letters and Motions. It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

HEADING:

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “*Bivens v. Six Unknown Federal Narcotics Agents*” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. Counts. You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**
2. Issue Involved. Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked “Other,” you must identify the specific issue involved.
3. Supporting Facts. After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.
4. Injury. State precisely how you were injured by the alleged violation of your rights.
5. Administrative Remedies. You must exhaust any available administrative remedies before you file a civil rights complaint. *See* 42 U.S.C. § 1997e. Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

Name and Prisoner/Booking Number

Place of Confinement

Mailing Address

City, State, Zip Code

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

_____,
(Full Name of Plaintiff)

Plaintiff,

v.

(1) _____,
(Full Name of Defendant)

(2) _____,

(3) _____,

(4) _____,

Defendant(s).

☐ Check if there are additional Defendants and attach page 1-A listing them.

CASE NO. _____
(To be supplied by the Clerk)

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

- ☐ Original Complaint
☐ First Amended Complaint
☐ Second Amended Complaint

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

☐ 28 U.S.C. § 1343(a); 42 U.S.C. § 1983

☐ 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).

☐ Other: _____.

2. Institution/city where violation occurred: _____.

B. DEFENDANTS

1. Name of first Defendant: _____. The first Defendant is employed as: _____ at _____.
(Position and Title) (Institution)
2. Name of second Defendant: _____. The second Defendant is employed as: _____ at _____.
(Position and Title) (Institution)
3. Name of third Defendant: _____. The third Defendant is employed as: _____ at _____.
(Position and Title) (Institution)
4. Name of fourth Defendant: _____. The fourth Defendant is employed as: _____ at _____.
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? ☐ Yes ☐ No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

COUNT II

1. State the constitutional or other federal civil right that was violated: _____
_____.

2. **Count II.** Identify the issue involved. Check **only one**. State additional issues in separate counts.
- | | | | |
|--|---|---|---------------------------------------|
| <input type="checkbox"/> Basic necessities | <input type="checkbox"/> Mail | <input type="checkbox"/> Access to the court | <input type="checkbox"/> Medical care |
| <input type="checkbox"/> Disciplinary proceedings | <input type="checkbox"/> Property | <input type="checkbox"/> Exercise of religion | <input type="checkbox"/> Retaliation |
| <input type="checkbox"/> Excessive force by an officer | <input type="checkbox"/> Threat to safety | <input type="checkbox"/> Other: _____ | |

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count II. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

[illegible]

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

- ## 5. Administrative Remedies.

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
- b. Did you submit a request for administrative relief on Count II? ☐ Yes ☐ No
- c. Did you appeal your request for relief on Count II to the highest level? ☐ Yes ☐ No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not.

COUNT III

1. State the constitutional or other federal civil right that was violated: _____.
 2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

<input type="checkbox"/> Basic necessities	<input type="checkbox"/> Mail	<input type="checkbox"/> Access to the court	<input type="checkbox"/> Medical care
<input type="checkbox"/> Disciplinary proceedings	<input type="checkbox"/> Property	<input type="checkbox"/> Exercise of religion	<input type="checkbox"/> Retaliation
<input type="checkbox"/> Excessive force by an officer	<input type="checkbox"/> Threat to safety	<input type="checkbox"/> Other: _____.	
 3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

_____.
 4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

_____.
 5. **Administrative Remedies.**
 - a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? ☐ Yes ☐ No
 - b. Did you submit a request for administrative relief on Count III? ☐ Yes ☐ No
 - c. Did you appeal your request for relief on Count III to the highest level? ☐ Yes ☐ No
 - d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____.

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

E. REQUEST FOR RELIEF

State the relief you are seeking:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
DATE

SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or
other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.